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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
HARRY LEVY, et al., doing business as SHERRY FRONTENAC HOTEL

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
STUYVESANT CORPORATION

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
ABE ALLENBERG, et al.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
A. H. S. CORPORATION

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
HOTEL DELMONICO, INC.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
SAUL COHEN, et al.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
MORRIS LANSBURGH AND DANIEL LIFTER

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
MARTINIQUE HOTEL, INC.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Hotel Employees Union, Local No. 255 (and David Herman, Clarence L. Smith, Albert H. Berlin, Henry K. Mischel, individually and as officers and agents of said Local) pray that a writ or writs of certiorari issue to review the judgments of the Supreme Court of Florida entered in the above-entitled cases on March 15, 1957.

OPINIONS BELOW

The opinions of the Circuit Court for Dade County in these cases are unreported. They are reprinted in the appendix hereto.

There were no opinions in the Supreme Court of Florida in these cases other than those discussed and set forth at length in the companion petition for certiorari filed this same day and styled *Hotel Employees Union* v. *Sax Enterprises, Inc., et al.* The opinions in these cases are as follows:

1) A *per curiam* order, in *Harry Levy, et al., d/b/a Sherry Frontenac Hotel* v. *Hotel Employees Union,* in conjunction with the Sans Souci case discussed in the *Sax* petition, directing the trial court to issue a temporary injunction. This is reported in 80 So. 2d 680 (1955) and reprinted in the appendix hereto;

2) An opinion in the same case, also issued in conjunction with the *San Souci* case but usually referred to as *Boca Raton Club, Inc.* v. *Hotel Employees Union,* quashing the trial court's order vacating the temporary injunction. This is reported in 83 So. 2d 11 (1955) and reprinted in the appendix hereto;

3) *Per curiam* opinions, identical in each case and reported in 93 So. 2d 583-600 (1957), affirming on the authority of *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d 415 (1957), the final injunctive orders issued by the trial court. One of such identical *per curiam* opinions is reprinted in the appendix hereto. The *Fontainebleau* opinion is reprinted in the appendix to the *Sax* petition.

JURISDICTION

The judgments of the Supreme Court of Florida in each of these cases were entered on March 15, 1957. On June 11, 1957, Mr. Justice Black ordered that the time for filing "petition or petitions for writ or writs of certiorari" be extended to and including August 12, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. §1257(3).

QUESTIONS PRESENTED

The questions presented here are identical with those presented in *Hotel Employees Union* v. *Sax.* They are:

1. Whether the Supreme Court of Florida may, consistently with the 14th Amendment as it has been applied by this Court to the prohibition of peaceful picketing, embark upon a course of decision plainly designed to prevent any picketing under any circumstances by employees engaged in an attempt to achieve union recognition and collective bargaining in the hotel industry.

2. Whether a state court may, consistently with the 14th Amendment, prohibit any publication whatsoever of the fact that a strike exists.

3. Whether Florida may, either by judicial action or by application of its statutory law, prohibit peaceful picketing, and thus regulate labor relations matters in an industry affecting commerce over which the National Labor Relations Board has refused to exercise jurisdiction.

4. Whether Florida may, under such circumstances, prohibit concerted action which is protected by Section 7 of the National Labor Relations Act.

5. Whether the Supreme Court of Florida, by repeatedly changing the rules governing peaceful picketing during the course of the litigation, deprived petitioners of due process of law in violation of the 14th Amendment.

STATUTES INVOLVED

Laws of Florida, 1943, No. 334, Ch. 21968, Fla. Stat. (1955) §§447.01-447.15, provides in pertinent part as follows:

> Section 1. **Policy.** (1) Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.
>
> (2) It is here now declared to be the policy of the

State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner and to the extent hereafter set forth.

Section 3. **Employee Rights.** Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 9. **Prohibited Acts.** It shall be unlawful for any person:

. . . . . .

(3) To participate in any strike, walk-out, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

. . . . . .

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in Section 3 of this Act, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

The relevant portions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., §151, *et seq.*) provide as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organiztaion, to form, join, or assist labor organizations, to bargain collectively through representatives of their

own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

* * *

Prevention of Unfair Labor Practices

Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

INTRODUCTORY STATEMENT

On March 15, 1957, the Supreme Court of Florida issued 22 identical opinions affirming final injunctions against all forms of picketing by the Hotel Employees Union at 22 different Miami and Miami Beach hotels, as well as prohibiting any publication of the existence of a strike at the hotels. Each of these opinions consisted of a single sentence —affirming the injunction on the authority of the Florida court's prior opinion in *Fontainbleau Hotel Corp.* v. *Hotel Employees Union,* Fla., 92 So. 2d 415 (1957).

In 9 of these 22 cases, the underlying dispute between the employer and the Union has been settled by the negotiation of a collective bargaining agreement. Review is being sought in this Court only with respect to 12 of the remaining cases. On June 11, 1957, Mr. Justice Black granted an application for extension of time in which to file a "petition or petitions" in each of these cases.

All of the cases were briefed together in the Florida Supreme Court as one case. The final opinion of the Florida Supreme Court in each case was identical. Rule 23(5) of the Rules of this Court would, therefore, permit the filing of a single petition for certiorari covering all the cases.

It is believed by counsel, however, that the presentation of all 12 cases in one petition for certiorari would be overly complex and confusing. There are 12 separate records; the findings of the trial courts are not identical in each case; in some of the cases there have been repeated reviews by the Florida Supreme Court of trial court actions on preliminary injunctions. In an effort to present the issues here to the Court in the least confusing manner counsel for petitioners have combined 4 of the 12 cases, pursuant to Rule 23(5), in the companion petition, filed this day, and entitled *Hotel Employees Union* v. *Sax Enterprises, Inc.*, et al. Those four, we believe, contain the significant opinions of the Florida Supreme Court (which spoke four times on the questions presented), adequately show the sequence and history of the litigation, and present the issues sought to be reviewed here in all of the cases. In the instant petition, covering the remaining eight cases, we shall rely on the factual framework and the reasons for granting the writ set forth in the *Sax* petition, specifying what we believe to be the relevant differences, if any. In our Statement of the Case we will treat each of the hotels separately with regard to facts, the manner in which the federal question was raised and preserved, and the separate court treatment.

For the sake of easy identification, and to minimize con-

fusion, the nine instant cases and their records will be referred to by the name of the hotel, or an abbreviation, as follows:

Name of Plaintiff	*Name of Hotel*	*Abbreviation*
Harry Levy, et al.	Sherry Frontenac	Front.
Stuyvesant Corporation	Lombardy	Lomb.
Abe Allenberg, et al.	Miami Colonial	Col.
A. H. S. Corporation	Nautilus	Naut.
Hotel Delmonico, Inc.	Delmonico	Del.
Saul Cohen, et al.	President Madison	Mad.
Morris Lansburgh & Daniel Lifter	Robert Richter	Rich.
Martinique Hotel, Inc.	Martinique	Mart.

STATEMENT OF THE CASE

The Sherry Frontenac

The Sherry Frontenac case is identical throughout with the *Sans Souci* case described in the companion petition filed this day. The complaint, which is substantially the same as in the Saxony and Sans Souci cases, was filed along with the complaints in those cases on April 18, 1955 (Front. R. 1-12). A combined hearing was held and, as in those cases, the trial court refused to issue a temporary injunction (Front. R. 15). The Saxony case then went on certiorari to the Supreme Court. On June 1, 1955, after the Supreme Court issued its Saxony opinion, it issued a combined *per curiam* covering six cases, including this case and Sans Souci, reversing the lower court on the basis of Saxony and directing it to issue an injunction. (Font. R. 57).

An injunction was issued in the broad form used in the Saxony and Sans Souci cases. Then, as in Sans Souci, the trial court heard testimony on a motion to vacate and vacated the injunction. In its order the court made specific findings that the employer hotel was engaged in a "cat and

mouse" game "as the weapon to be used by plaintiffs with the ultimate hope that the Union's representatives would tire of playing and finally look elsewhere for recreation. This the Union refused to do, however, and the picket line was the result." (Front. R. 37-38).

The Florida Supreme Court again reversed, as part of the Boca Raton-Sans Souci opinion (Front. R. 75-83), and the case went to its final conclusion in the same manner as the Sans Souci case.

The federal questions relied upon were raised and preserved exactly as in the Sax and Sans Souci cases. Following the issuance of the injunction the union filed its answer and supplemental answer squarely raising the free speech questions and the pre-emption question (Front. R. 24, 27-28, 89-91). In lieu of further testimony, the parties stipulated as to the presentation, via affidavit, of evidence as to the effect of the hotel's operations on interstate commerce (Front. R. 94-96). This evidence was rejected by the trial court as immaterial and irrelevant (Front. R. 98). The union's assignment of errors to the Florida Supreme Court squarely raised as error violation of rights guaranteed by the 1st and 14th Amendments to the U. S. Constitution as well as the error in refusing to acknowledge the absence of state court jurisdiction under the National Labor Relations Act. A copy of the assignment of error is attached hereto in the appendix and is substantially identical to the assignments of errors filed in all eight of the instant cases. Joint briefs for all of the hotel cases, including the eight instant cases, were filed with the Florida Supreme Court on final hearing, copies of which briefs are made a part of the Sax Record, pages 426-547. Those briefs clearly show that issue was squarely joined as to lack of the Federal questions raised herein.

The Lombardy Hotel

All of the succeeding cases, including the Lombardy, were begun in what we have called the "third phase"—after the

Supreme Court's opinion in the Saxony case. The preliminary injunction in Lombardy, which was issued June 2, 1955, was not in the broad form of the other cases but restricts only picketing of the hotel premises (Lomb. R. 104-05). The testimony makes it clear that the Union had sought to comply with the Sax order, and there is no evidence of any coercion or violence (Lomb. R. 23-46). The temporary injunction was made final in the fifth phase (Lomb. R. 117) and the Florida Supreme Court affirmed *per curiam*. (Lomb. R. 126). The federal questions relied upon were raised and preserved exactly as in the Sherry Frontenac case (Lomb. R. 15, 107-09, 112-14, 119-21).

The Miami Colonial Hotel

The preliminary injunction in this case was issued after the Supreme Court decision in Sax. It restricted only picketing of the premises (Col. R. 9-10). The Court declined to vacate the injunction after further testimony. (Col. R. 210-14). The testimony clearly shows the Union's attempts to comply with Sax and there is no evidence of violence or coercion (Col. R. 88-194). The temporary injunction was made final (Col. R. 220-21) and affirmed *per curiam* (Col. R. 229). The federal questions relied upon were raised and preserved as in Sherry Frontenac. (Col. R. 205, 217-19, 223-224A).

Nautilus

The preliminary injunction in this case, issued after the Supreme Court decision in Sax, restricted only picketing of the premises (Naut. R. 22-24). The Union answer included a defense that the question was moot since there was no picketing and the union did not plan to resume picketing (Naut. R. 20) but to no avail. No testimony was taken and the temporary injunction was made final (Naut. R. 30-31) and affirmed *per curiam* (Naut. R. 39). The federal ques-

tions were raised and preserved as in Sherry Frontenac (Naut. R. 25-29, 33-34).

The Delmonico Hotel

In this case, as in the others, the preliminary injunction was issued after the Florida Supreme Court decision in the Sax case (Del. R. 26-27). The order restricted only picketing of the hotel premises.

The case is unique in that no strike was ever called. The employees were specifically directed to continue work while the picketing was going on (Del. R. 60). The pickets carried signs stating "This hotel refuses to aid in determining its employees' bargaining agent. Join the Hotel Employees' Union Local 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." The testimony shows that the employer had in fact refused to agree to any type of election to determine the majority status of the Union (Del. R. 54). The employer admitted that all the employees continued to cross the picket line (Del. R. 46). In short the record makes it clear that there was no coercion of any kind of any employees, nor for that matter of anyone else. The picketing advertised what the record apparently indicates was a fact—that the employer refused to aid in determining the bargaining representative.

Nevertheless, the injunction was made permanent (Del. R. 87-88) and affirmed *per curiam* by the Florida Supreme Court (Del. R. 97). The federal questions relied upon were raised and preserved exactly as in Sherry Frontenac (Del. R. 14, 28-37, 90-92).

The President Madison Hotel

The President Madison case is identical to and was heard with the Delmonico case above. The preliminary injunction was issued on June 16, 1955 (Mad. R. 16-17), was made final (Mad. R. 30-31) and affirmed *per curiam* (Mad.

R. 40). The federal questions relied upon were raised and preserved as in Sherry Frontenac (Mad. R. 14, 18-20, 22-25, 33-35).

The Robert Richter Hotel

This is another "Third Phase" case where the preliminary injunction was issued after the Florida Supreme Court decision in the Sax case. (Rich. R. 106-108). The injunction order was one of the "broad form" which restricted the union not only from picketing but also from publishing in any manner the facts as to a strike at the hotel or as to the refusal of the hotel to negotiate or recognize the union. The temporary injunction was made final (Rich. R. 115) and affirmed *per curiam* (Rich. R. 124). The federal questions relied upon were raised and preserved exactly as in Sherry Frontenac (Rich. R. 59, 103-104, 109-10, 117-19).

Martinique

The Martinique was also one of the "Third Phase" cases where the preliminary injunction was issued after the Florida Supreme Court decision in the Sax case. (Mart. R. 43-45). The injunction was of the "broad form". It was made final (Mart. R. 50) and affirmed *per curiam* (Mart. R. 59). The federal questions relied upon were raised and preserved exactly as in Sherry Frontenac (Mart. R. 24-25, 39-41, 46-49, 52-54).

REASONS FOR GRANTING THE WRIT

The nine instant cases involve the same questions presented to the court in the Sax case and there is no need to repeat in this petition the reasons for granting the writ set forth there. They apply equally well to the cases involved here.

One additional point should be made. The Delmonico and the President Madison cases covered in this petition

present the free speech question in its purest fashion. The effect of the court orders prohibiting the carrying of banners which merely proclaimed that the employer had refused to aid in the determination of a bargaining agent was clearly to prohibit speech and nothing more. The employees were crossing the picket line; the banners did not say a strike was in progress; there was no evidence that the picketing coerced anybody. If this picketing can be restrained, then, indeed, state courts and state legislatures "can enact blanket prohibitions against picketing," the *Vogt* case notwithstanding. (*International Brotherhood of Teamsters* v. *Vogt*, U. S. Sup. Ct., No. 79, Oct. Term 1956 (25 Law Week 4504)).

CONCLUSION

For the reasons above set forth, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A—OPINIONS BELOW

Sherry Frontenac

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

IN CHANCERY No. 178,668

HARRY LEVY, MARK ALLEN, LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER AND SALLY KRONE, HARRY A. LEVY IRREVOCABLE TRUST, MINNIE GINSBERG, JEROME GRANGER, DOING BUSINESS AS THE SHERRY FRONTENER, doing business as the SHERRY FRONTENAC HOTEL,

Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,

Defendants

ORDER DENYING PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF

THIS CAUSE came on regularly for hearing upon the plaintiff's application for temporary injunctive relief in accordance with the prayers of the verified complaint as amended. The Court has heard and considered the testimony adduced on behalf of the plaintiff, has read and considered the evidenciary exhibits of the plaintiff, and has heard and considered arguments of counsel for the respective parties. In consideration thereof, the Court is of the opinion and finds that the plaintiff has not made a sufficient showing for injunctive relief on the basis of the manner of picketing and the method in which it is being conducted.

IT IS ACCORDINGLY, ORDERED, ADJUDGED AND DECREED that the plaintiff's application for a temporary injunction be and it is hereby denied, without prejudice; and

IT IS FURTHER ORDERED that, the defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed upon, but determination of this question is reserved until final hearing.

DONE AND ORDERED in Chambers, at Miami, Florida, this 11th day of May, 1955.

ROBERT L. FLOYD
Circuit Judge

Sherry Frontenac

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1955, SPECIAL DIVISION A

CASE No. 26,197

BOCA RATON CLUB, INC., A FLORIDA CORPORATION, AND HILDEMART CORPORATION, A FLORIDA CORPORATION,

Petitioners,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents.

* * * * *

CASE No. 26,199

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER AND SALLY KRONE, HARRY A. LEVY, IRREVOCABLE TRUST, MINNIE GINSBERG, JEROME GRANGER, DOING BUSINESS AS THE SHERRY FRONTENAC HOTEL,

Petitioners,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents.

* * * * *

(Captions of other cases omitted.)

Opinion filed June 1, 1955.

AN APPEAL FROM THE CIRCUIT COURT FOR DADE COUNTY, ROBERT L. FLOYD, AND GLADYS L. CRAWFORD, JUDGES.

PER CURIAM:

The foregoing cases are similar to Sax Enterprises, Inc. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, decided May 27, 1955. These cases were combined and heard together in the lower court. Application for temporary injunction was denied after evidence in each case. The reason for denial was that the "plaintiff has not made a sufficient showing for relief on the basis of the manner of the picketing and the method in which it is being conducted." The court further found that "defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed upon, but determination of this question is reversed until final hearing."

On authority of Sax Enterprises, Inc., vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, decided May 27, 1955, certiorari is granted as to that part of the Chancellor's order in each of said causes which deferred ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and each of said causes is remanded to the Circuit Court with directions to enter a temporary restraining order therein.

It is so ordered.

DREW, C.J., TERRELL, SEBRING AND HOBSON, J. J., CONCUR.

Sherry Frontenac

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA,

IN CHANCERY No. 178,668-J

HARRY LEVY, MARK ALLEN, LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURG CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER AND SALLY KRONE, HARRY A. LEVY IRREVOCABLE TRUST, MINNIE GINSBURG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL,

Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants.

ORDER GRANTING MOTION TO VACATE PRELIMINARY INJUNCTION

On April 16, 1955, the defendant union placed a picket line at the SHERRY FRONTENAC HOTEL at Miami Beach. The pickets carried placards announcing that "This Hotel refuses to negotiate with Hotel Employees Union Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". Simultaneously with the initiation of picketing, a number of the employees at the hotel walked out and abandoned their work. Plaintiffs made application for temporary injunctive relief against the picketing upon the asserted grounds that the picketing was accompanied by force violence and coercion and that it was conducted for an unlawful purpose.

On May 11, 1955, I denied plaintiffs' application for temporary injunctive relief. I found and adjudicated that the plaintiffs had failed to make a sufficient showing for injunctive relief upon the alleged basis of violence and reserved until final hearing deter-

mination of whether or not the picketing was conducted for an unlawful purpose.

The Supreme Court of Florida, on June 1, 1955, granted certiorari as to that part of my order which deferred ruling upon the question of whether or not the picketing was being carried on for an unlawful purpose and remanded the cause with directions to enter a temporary restraining order immediately. And in obedience to the mandate and order of the Supreme Court, I entered a Preliminary Injunction on June 2, 1955. Thereupon the defendants made application to vacate and dissolve such preliminary injunction. I set the motion to vacate for hearing before me on June 4, 1955. I have heard and considered the testimony and evidence and arguments of counsel for the respective parties.

The defendant's motion to vacate the preliminary injunction presents for determination whether the picketing engaged in by the defendants was lawful or unlawful under the law of the case as established by the Supreme Court.

The Supreme Court described the procedural course which must be adopted and pursued by a labor union before it has the right to engage in peaceful picketing of an employer's premises and predicated upon the refusal of the employer to recognize and negotiate with the union as a representative of such employer's employees. The Court said that "In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative, and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations."

Based upon the testimony and evidence adduced before me, I find that the defendant union, through its authorized representatives, did inform the plaintiffs of its desire to engage in negotiations as the bargaining agent of a number of employees at the SHERRY FRONTENAC HOTEL within a reasonable time prior to the date on which picketing began. I further find that the union has established that a number of plaintiffs' employees, although less than a majority, had chosen the defendant union as their bargaining agent and that these employees made this choice

prior to the date of the appearance of the picket line before the plaintiff's premises. I further find that the representatives of the defendant union did inform the plaintiff of the object to be accomplished by the picketing prior to April 16, 1955, and that the plaintiffs did evade and stall the representatives of the defendant union to an extent that no reasonable man could conclude other than that these evasive tactics were for any other purpose than refusing to negotiate. It is apparent from the record in this cause that the course of conduct engaged in by the plaintiffs after the plaintiffs learned of, and were informed about, the defendant union's desire to negotiate was designed to thwart any attempt by the defendant union to be able to point to any concrete evidence that negotiations were, in fact, refused. It was as though a "cat and mouse" game was the weapon to be used by the plaintiffs with the ultimate hope that the union's representatives would tire of playing and finally look elsewhere for recreation. This, the union refused to do, however, and the picket line was the result. The facts and circumstances in this case are substantially the same as those in Whitehead, et al. v. Miami Laundry Company (Fla.) 36 So. 2d, 382, and Johnson v. White Swan Laundry, Inc. (Fla.) 41 So. 2d, 874.

The only major difference in this case and the Johnson case, supra is that in the latter a "strike vote" of the members of the union who were employees of appellee in that case had been taken pursuant to Chapter 447.09 (3 and 4), Florida Statutes. There is evidence before this Court that on May 25, 1955, the defendant union called a "strike vote" and did set up some form of machinery by which to allow its members to cast their ballot. This Court is of the opinion that the facts and circumstances in this case do not make it necessary to invoke the provisions of Chapter 447.09 (3 and 4) Florida Statutes. This is a suit against the union, not its members who were employees of the plaintiff. Subsequent to the union's call for a picket line, a number of the union members, who were employees of the plaintiff refrained from crossing the picket line established by the union and refused to report for work. These employees were replaced by other permanent employees hired by the plaintiffs. The issue is clear. The purpose for the establishment of a picket line was in the exercise of

the union's right of free speech—to proclaim to the world that plaintiffs refused to negotiate with the union's bargaining agent of a number of the employees at plaintiffs' hotel. No evidence of coercion and intimidation by the union against either its own members, who were employees, or against non-union employees of plaintiffs who refused to cross the picket line, has been made to appear.

Were it necessary, however, to decide the constitutionality of Chapter 447.09 (3 and 4), Florida Statutes, I would be constrained to hold the same unconstitutional for the reasons given and on authority of Stapleton v. Mitchell (Kan.) 60 F. Supp. 51, wherein the language of the statute there under consideration was exactly the same as the Flordia Statute, supra.

I, therefore, find that the picketing was not conducted for an unlawful purpose and that the plaintiffs have failed, by competent evidence, to sustain the allegations in its complaint "that the picket line was placed around the plaintiffs' place of business for an unlawful or illegal purpose. . . ." Whitehead, et al, v. Miami Laundry Company, supra; Johnson v. White Swan Laundry, Inc. supra; Moore v. City Dry Cleaners & Laundry, Inc. (Fla.) 41 So. 2d 865; Hotel & Restaurant Employees' & Bartenders' Union Local No. 156, A. F. of L. v. Cothron, et al. (Fla.) 59 So. 2d 366.

It is therefore, ORDERED, ADJUDGED AND DECREED that defendants' Motion to Vacate the Preliminary Injunction heretofore entered in this cause on the 2nd day of June, 1955, be, and the same is hereby granted, and said Preliminary Injunction be, and the same is hereby vacated.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 16th day of June, 1955.

ROBERT L. FLOYD
Circuit Judge

Sherry Frontenac

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955, EN BANC.

CASE No. 26,197

BOCA RATON CLUB, INC., A FLORIDA CORPORATION, AND HILDEMART CORPORATION, A FLORIDA CORPORATION,

Petitioner,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents.

* * * * *

CASE No. 26,199

HARRY LEVY, et al., d/b/a THE SHERRY-FRONTENAC HOTEL,

Petitioner.

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents.

* * * * *

(Captions of other cases omitted)

Opinion filed October 19, 1955.

WRITS OF CERTIORARI TO THE CIRCUIT COURT OF DADE COUNTY, ROBERT L. FLOYD AND GRADY L. CRAWFORD, JUDGES.

HOBSON, J.:

In *Sax Enterprises* v. *Hotel Employees Union Local No. 255,* 80 So. 2d 602, we decided a prior aspect of the matter which the cases now under consideration bring before this court. In the *Sax*

case we held on the basis of the showing made that it was error to deny a temporary restraining order against the picketing of the Saxony Hotel. The injunctive relief which was granted as a result of our mandates in the *Sax* case and in the instant cases related to picketing and the publicity measures used by the defendant-respondent union in connection therewith. Subsequently defensive pleadings were filed and further testimony taken upon motions of the respondents to dissolve and vacate the temporary injunctions issued pursuant to the mandates of this court. The chancellors below have issued orders of identical effect in all of these cases, granting the motions and dissolving and vacating the temporary injunctions.

Although the parties have attempted to present a multitude of issues in these cases, we are of the view that the only issues really involved are whether (1) the respondent union complied with the prerequisites to lawful picketing outlined in our opinion in the *Sax* case, supra, and (2) whether the picketing was for a lawful or unlawful purpose.

The chancellors found in substance that before the picketing commenced, the union did in fact represent some of the employees although less than a majority; that the union informed the petitioners of its desire to engage in negotiations, and that the petitioners used evasive tactics amounting to a refusal to negotiate or bargain. No one of the chancellors, however, made a finding that the union had, prior to the picketing, established by evidence of substantial character that any of the employees had chosen it as their representative.

Respondents contend that: the findings which were made are supported by competent substantial evidence; such findings in effect established the truth of the message contained in the cards which were displayed by the pickets, and which we reproduced in the *Sax* case, supra; the matter thus resolves itself into a situation where peaceful picketing has been carried on with the objective of accurately publishing the facts of a labor dispute, which is a lawful purpose within the doctrine of *Whitehead* v. *Miami Laundry Co.*, Fla., 36 So. 2d 382, and *Johnson* v. *White Swan Laundry, Inc.*, 41 So. 2d 874.

Petitioners take the position that the respondent union failed to

prove compliance with the prerequisite to lawful picketing set forth in the *Sax* opinion, of establishing "that the employees have chosen it as their representative."

In our opinion in the *Sax* case we said:

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative, Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union, supra, and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc. v. Dickson, 148 Tex. 35, 219 S.W. 2d. 795."

Respondents say that the above pronouncements were nothing more than obiter dicta and that in any event they run counter to the established law of this jurisdiction. They cite our opinion in *Hotel & Restaurant Employees' & Bartenders Union Local No. 156, A. F. of L.* v. *Cothron, et al.,* 59 So. 2d 366, from which we quote:

> "It appears that the Chancellor either misconstrued or misapplied the law to the facts as he found them in entering the injunction. The Chancellor stated that 'Complainants should have been advised of the reasons for the impending picketing and given an opportunity to remedy the cause as they saw fit.' This was no reason to grant an injunction in this case. There is no rule, regulation, or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law. The advisability or necessity for such is for legislative determination and not for the courts."

We face this contention of respondents forthrightly. Our opinion in the *Cothron* case does indeed appear to be contrary to our state-

ment in the *Sax* case, supra, to the effect that as prerequisite to lawful picketing "the labor organization must also inform the employer of the object to be accomplished by the picketing". It might be said that the underlying reason for our ruling in the *Cothron* case is a sound basis for recanting our pronouncement as to the other two prerequisites to lawful picketing outlined in the *Sax* opinion. We have given careful consideration to the apparent conflict between these two cases and have concluded that although there may exist "no rule, regulation or law of this State which requires" the foregoing prerequisites to lawful picketing, certainly honesty of purpose, fair dealing and a sound public policy demand them. Moreover, Sec. 447.03, F.S., grants unto *employees* the right to "*self*-organization" (Italics supplied) and "to bargain *collectively* through representatives of *their own choosing*" (Italics supplied). It seems clear that before being required to enter into negotiations with an alleged bargaining agent an employer should be shown by evidence of substantial character that his employees, or at least some of them, have voluntarily exercised the rights accorded them by our statute. Hence we deem it appropriate for the courts to fix reasonable and fair prerequisites to the end that, rather than economic strife, there may exist peaceful accord of labor disputes so necessary in the interest of the common weal.

The placards displayed by the pickets carried the following words: "This hotel refused to negotiate with Hotel Employees Union, Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". This language unquestionably connotes to the "common mind" a compliance with all prerequisites to lawful picketing, i.e., a pre-existing honest and forthright attempt to bring about negotiations between an authorized bargaining agent and the employer because of a bona fide labor dispute between employee and employer and a fair opportunity to engage in negotiations. It is clear that such an opportunity cannot be said to exist until and unless the employer is first assured by evidence of substantial character that if he negotiates he will do so with an authorized bargaining agent. The words on the placards "refused to negotiate" necessarily presuppose an opportunity to negotiate. Surely no one can doubt that such opportunity should be a "fair" opportunity. The placards did not speak the truth

in all its stark significance or give to the public actual facts concerning a labor dispute. Indeed, so far as this record shows petitioners, except for the uncorroborated representations of a putative bargaining agent, never, prior to the most recent hearing in the circuit court, knew as a matter of fact that their employees were actually dissatisfied and had, because of such dissatisfaction, designated the respondent as their bargaining agent. It follows, as night the day, that without such knowledge they could not know that a labor dispute existed nor, indeed, would a labor dispute normally come into being without some dissatisfaction on the part of the employees. No dispute of any kind or character can exist unless the parties said to be involved know that there is actually disagreement between them.

Moreover, it is the duty of the employer to treat only with the employees' true representative and the unsupported statement of a labor organizer is an insufficient showing to justify the employer in dealing with the alleged bargaining agent. In *Texarkana Bus Co.* v. *National Labor Relations Board,* 119 F. 2d 480, the court stated, and we quote with approval:

> "The employer can not be required to devote his time to negotiating with every individual claiming to represent a bargaining unit, and can not be charged with unfair practice in this regard unless there is presented to him evidence of a substantial character showing that the representative is in fact an authorized bargaining agency."

Although the court was there dealing with the National Labor Relations Act which *does not* "require an employer to bargain collectively with a union which has not been designated by a *majority* of the employees in an appropriate unit" (italics supplied), nevertheless the rationale of the opinion in that case is equally applicable here. This is so because there is no rule, regulation or law of this State of which we are cognizant which requires an employer to bargain collectively with a union which has not been designated by at least *some* of the employees in an appropriate unit. The Circuit Court of Appeals of the Eighth Circuit in the last cited case said, and we again quote with approval:

> "As the employer must act at his peril in recognizing a

representative, common prudence dictates that he refrain from acting until satisfactory proof is produced that the representative in fact speaks for a majority of the employees." 119 F. 2d 480, 484.

It is deemed appropriate to observe that we have outlined *prerequisites* to lawful picketing and it is not sufficient to establish, even in court, after picketing is a reality that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or, for that matter, a majority of the employer's employees.

We hold herein that as prerequisites to lawful picketing the union must establish by some evidence of substantial character that at least some of the employees have chosen it as their representative and "afford to the employer a fair opportunity to engage in negotiations", any pronouncement in the *Cothron* case to the contrary notwithstanding. We might add that we deem it necessary in order to afford to the employer a fair opportunity to engage in negotiations that the labor organization inform the employer of the subjects intended for negotiation.

The picketing of petitioners' places of business by the respondent union under the facts and circumstances of these cases and upon the basis that petitioners refused to negotiate with the union is the unlawful use of economic pressure to coerce the petitioners into negotiations with an alleged agent who failed and refused as required by law and just dealing timely and appropriately to establish his authority. Hence the picketing is for an unlawful purpose.

Respondents, however, say the petitioners knew that certain organizers, particularly the respondent Mr. David Herman, had attempted to persuade the employees to designate respondent union as their bargaining agent or to join the union, as is evidenced by the fact that the employers endeavored to dissuade the employees from taking either action. Such circumstance falls far short of establishing as a matter of fact that the employees had pursued either course and it assuredly does not prove that the employers knew that the employees, or any of them, had actually so designated the union or had joined it.

This record paints a picture not of employees exercising their

right to "self-organization" or their right to "bargain collectively through representatives of their own choosing" but, on the contrary, limns one of two labor organizers coming to Miami Beach early this year, organizing a local labor union, and attempting for a period of two to three months, as they had every right to do, to persuade petitioners' employees that they were not being treated fairly in the matter of hours, wages and conditions of work, and that they should therefore designate the union as their bargaining agent or join the union or do both. After failing to so persuade no more than an insignificant number of such employees that they were being treated unfairly, as is established by the designation cards introduced in evidence, they immediately resorted to the use of the coercive effect of picketing without either of them first establishing by any evidence substantial in character that the respondent union in truth and in fact had been designated as the bargaining agent of any employees of the petitioner. Thereafter these men, who cannot be said to have given the employers a fair opportunity to negotiate since they gave said employers no substantial evidence of the union's authority to represent any of the employees, arranged for and had the picket lines thrown up for the obvious purpose of forcing the employers to cause their employees to designate the union as their bargaining agent and perhaps to join the union. That picketing carried on under such circumstances is unlawful cannot be gainsaid. It falls within the "unlawful purpose" doctrine of *Miami Typographical Union* v. *Ormerod,* 61 So. 2d 753

We hold that the picketing in these cases was begun by respondents without first having submitted to the petitioners competent substantial evidence of their authority as alleged bargaining agents, which caused the picketing to be unlawful, and that the picketing was carried on for an unlawful purpose.

It follows that the petitions for certiorari should be granted and the challenged orders quashed.

It is so ordered.

DREW, C. J., TERRELL AND SEBRING, JJ., CONCUR.

Sherry Frontenac

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957, DIVISION B.

CASE No. 28,249

HOTEL EMPLOYEES UNION, LOCAL NO 255 (A. F. of L.), et al.,

Appellants,

vs.

HARRY LEVY, MARK ALLEN TRUST, ERWIN J. FRIED, et al.

Appellee.

Opinion filed March 15, 1957.

AN APPEAL FROM THE CIRCUIT COURT FOR DADE COUNTY, CHARLES A. CARROLL, JUDGE.

PER CURIAM

Affirmed on authority of Fontainebleau Hotel Corp vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

TERRELL, C. J. HOBSON, DREW and O'DONNELL, J.J., CONCUR.

(Per Curiam opinions identical, except for the caption, were issued on March 15, 1957, in each of the other cases as to which review is here sought.)

Lombardy

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTNY, FLORIDA.

IN CHANCERY. No. 179,408

STUYVESANT CORPORATION, A FLORIDA CORPORATION,

Plaintiff,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants.

ORDER

THIS CAUSE has been heard after due notice on the plaintiff's application for interlocutory injunctive relief and the Court has considered the testimony and the proofs submitted in support of, and in opposition to such application.

The Court is guided and governed by the opinion of the Supreme Court of Florida filed May 27, 1955, in Sax Enterprises, Inc. versus Hotel Employees Union, Local No. 255 (A. F. of L.) et al.

Accordingly, it is ordered and decreed that the defendants, Hotel Employees Union, Local No. 255 (A. F. of L.) and Albert H. Berlin, Clarence L. Smith and Henry Mischel, their agents, servants, employees and all persons acting in concert or participation with them, be and they are, and each of them is, restrained and enjoined until the further order of this Court from picketing the plaintiff's place of business located at 6305 Collins Avenue, Miami Beach, Florida.

The plaintiff shall file herein an injunction bond payable to the defendants, in the principal amount of $2500.00, with good and sufficient surety, to be approved by the Clerk of this Court and conditioned as required by law to pay all costs, damages and expenses which may be suffered by the defendants by reason of the issuing of this injunction if the injunction shall be dissolved, or the complaint upon which it was granted, be dismissed.

ORDERED AND DECREED in the Courthouse, Dade County, Florida, at Miami, this 2 day of June, 1955.

MARSHALL C. WISEHART
Circuit Court Judge

Miami Colonial

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

IN CHANCERY NO. 180056-C

ABE ALLENBERG, et al., d/b/a, MIAMI COLONIAL HOTEL,

Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,

Defendants

OPINION AND ORDER

Giblin, Circuit Judge:

The Supreme Court of Florida in Sax Enterprises, Inc. v. Hotel Employees Union, Local No. 255 (in which the court's opinion was written by Mr. Justice Hobson) has prescribed the procedural course which must be adopted and followed by a labor union before there can be a lawful picketing of an employer's place of business.

The court, in the cited case, said that "in order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative . . . and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations."

Guided and governed by the Supreme Court's decision, I entered interlocutory orders by which picketing at the three hotels involved in these cases was enjoined. I held that the picketing was unlawful; and one of the factual bases for the holding was that the union had not established that the employees had chosen it as their representative.

Counsel, in oral argument, have advised me that at the hearing before the appellate court in the cited case Mr. Justice Hobson, in answer to an inquiry as to the method which should be employed by the union in establishing that the employees had chosen it as their representative, replied that the union should submit to

the employer "trustworthy" evidence of the selection by the employees of the union as their bargaining agent. Without any attempt to express in clearer or better language the sensible and logical extemporaneous response of Mr. Justice Hobson (who later wrote the Court's opinion), my interpretation of his opinion is that it is incumbent on the union, before the economic weapon of picketing may be legally used, to present to the employer evidence which would or should be satisfactory and acceptable to a fair, reasonable and prudent employer.

The testimony and proofs adduced at the hearing of the plaintiffs' applications for interlocutory injunctive relief in these cases showed conclusively that, before the union's picketing of the three hotels began, the union had submitted to the employers no evidence whatever that the employees had chosen it as their representative other than the unsupported assertion of a small group of union officials or agents that the union represented the employees.

It is obvious, therefore, that at its inception the picketing was unlawful and that, had I not enjoined it, I would have been guilty of a deliberate refusal to comply with the directives of our court of last resort.

The evidence, at the hearing of the applications for temporary restraining orders and at the hearing of the defendant union's motions to dissolve the injunctions, disclosed that, simultaneously with the initiation of the unlawful picketing, a number of the employees of each of the three hotels struck and walked out, abandoning their work. Their action, as the Supreme Court of the United States has held in National Labor Relations Board v. Sands Manufacturing Co., 306 U. S. 332, privileged their employers to engage other employees to fill their places.

The evidence reveals that the employees who severed their relations with their employers have been lawfully replaced by permanent employees, who, so far as the evidence shows, are not members of or represented by the defendant union.

Assuming, without deciding, that the former employees who walked out on strike had chosen the union as their representative, there has been no showing at the hearing of the motions for the dissolution of the injunctions that any of the present employees

have selected the union as their bargaining agent or that they have any grievances against the employers. If, in fact, the union had been designated as their bargaining agent by the former employees, they no longer occupy the status of employees of the plaintiff employers.

At the conclusion of the initial hearing I expressed the opinion, to which I adhere, that the union had acted precipitately. Not only did it act precipitately, but it acted unwisely. By inducing the former employees to leave their employment, before there had been compliance with the procedural rules prescribed by the Supreme Court, the union was guilty of a disservice to such employees, because its precipitate action privileged the employers to supplant the employees who abandoned their jobs with other employees.

The motions to dissolve the injunctive orders should be, and they are, denied, because it has not been established that the defendant union has been chosen by the present employees as their bargaining agent. See Basch & Sons, Inc. v. Retail Union of New Jersey, Local 108 (N.J.), 99 Atl. 2d 519. The circumstances are such that to permit a resumption of picketing would be an unwarranted exercise of judicial power. I cannot remedy the mistake which the union and the former employees made by their hasty and ill-advised action.

The primary purpose of resumed picketing could only be to compel the discharge of the present employees and the reinstatement of the former employees. Such a purpose would be an unlawful one.

This order is signed in triplicate so that a counterpart may be filed and recorded in each of the three cases.

Ordered in chambers in the Courthouse of Dade, County, Florida, at Miami, June 10, 1955, by

VINCENT C. GIBLIN
Circuit Judge

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA,

IN CHANCERY No. 180268.

A. H. S. CORPORATION, A FLORIDA CORPORATION,
Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,
Defendants.

PRELIMINARY INJUNCTION

This cause came on to be heard before me on plaintiff's application for preliminary injunction, and the Court considered the bill and supporting affidavits and answer of defendants submitted in opposition to the application.

The plaintiff charged, among other things, that the defendant union had picketed the plaintiff's hotel for failure of the plaintiff to negotiate or deal with the union, as a representative of the plaintiff's employees, and that such picketing was unlawful and should be enjoined, in that there was no labor dispute and there had been no refusal to negotiate with the proper representative, but that the defendant union and its agents had failed to furnish any satisfactory proof or evidence of their having been chosen by a majority of the employees to act as their representative or bargaining agent. There were supporting affidavits on plaintiff's bill on these points.

Defendants answered, contending for but making no sufficient showing of a right to represent the employees, and defendants answered that the question was moot and there should be no injunction because there was no longer any picketing and disclaimed any intention to resume picketing.

It appears the picketing commenced at this hotel on June 3, 1955. On Saturday, June 4th, the plaintiff caused the present bill for injunction to be prepared and a copy of it was served on defendant or defendant's counsel late on the day of June 4th; that the picketing continued until sometime on June 5th, when it was

stopped, but resumed again later on June 5th and continued until 2:00 A.M., of Monday, June 6th, since which it has not again been resumed.

I find that the picketing was unlawful, as determined by the Supreme Court in the recent case of Sax Enterprises, Inc. against this same defendant union by an opinion and judgment of that Court dated May 27, 1955, Because of the failure to establish the representation as indicated above it follows that the picketing was unlawful, at the time it was in progress and at the time the defendant union received notice of the proceeding or intention to proceed for an injunction against the picketing.

I further find that the subsequent termination of the picketing does not render the matter moot and does not preclude the entry of an injunction. On this point this Court called for authorities from the parties, and plaintiff has furnished ample authorities to that effect, including the following:

United States v. W. T. Grant Co., 345 U.S. 629, 97 L. Ed. 1301, 73 S. Ct. 894.

Henry Shore v. Building & Construction Trades Council, 173 Fed. (2nd) 678.

Peters v. Southern Bell Tel. & Tel. Co., et al., 70 So. (2nd) 547.

Jones v. Securities and Exchange Commission, 288 U.S. 1, 56 S. Ct. 654, 80 L. Ed. 1015.

United States v. Oregon State Medical Society, et al., 343 U.S. 326, 72 S. Ct. 690, 96 L. Ed. 978.

Securities and Exchange Commission v. Torr, 87 Fed. (2nd) 446, 449.

Bowling v. National Convoy & Trucking Co., 135 So. 541.

See High on Injunction, Vol. 1, p. 9.

WEREUPON, IT IS ORDERED that the defendants and each of them, their officers, agents, servants, employees and attorneys, be and they and each of them hereby are enjoined and restrained until further order of this Court from picketing the hotel premises involved in this suit.

The plaintiff shall file herein an injunction bond, payable to the defendants in the principal amount of $2000.00, with good

and sufficient surety to be approved by the Clerk of this Court, and conditioned as required by law, to pay all costs, damages and expenses which may be suffered by defendants by reason of the issuing of said injunction, if the injunction shall be dissolved or if the bill upon which it was granted be dismissed.

DONE AND ORDERED, in Chambers, at Miami, Florida, this 17 day of June, 1955.

CHARLES A. CARROLL
Circuit Judge

Delmonico

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,374

HOTEL DELMONICO, INC., A FLORIDA CORPORATION,

Plaintiff,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants.

TEMPORARY RESTRAINING ORDER

THIS CAUSE has been heard after due notice on plaintiff's application for interlocutory injunctive relief, and the Court has heard and considered the proofs submitted in support of and in opposition to such application.

The Court is guided and governed by the opinion of the Supreme Court of Florida filed May 27, 1955, in SAX ENTERPRISES, INC, versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., as the same was applied in my opinion and order filed June 10, 1955, in McALLISTER HOTEL, INC. versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.). et al (Chancery Cause Numbered 180,054), BISCAYNE TERRACE HOTEL, INC. versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., (Chancery Cause Numbered 180,055), and ABE ALLENBERG, et al., doing business as MIAMI COLONIAL HOTEL versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al (Chancery Caus Numbered 180,056). Under the principles therein enunciate the picketing is unlawful.

ACCORDINGLY, IT IS ORDERED AND DECREED that the defendants, HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, their agents, servants, employees, and all persons act-

ing in concert or participation with them, be and they are, and each of them is, restrained and enjoined until the further order of this Court from picketing the plaintiff's place of business located at 6393 Collins Avenue, Miami Beach, Florida.

The plaintiff shall, within four days from this date, furnish and file a good and sufficient bond in the penal sum of $2,500.00, payable to the defendants, with surety or sureties to be approved by the Clerk, conditioned to pay all damages and costs which the defendants shall suffer or incur as a result of the wrongful application for this order should it be determined that such application was wrongful.

DONE AND ORDERED in the Courthouse, Dade County, Florida, at Miami, June 16, 1955.

VINCENT C. GIBLIN
Circuit Judge

President Madison

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,373

SAUL COHEN, SIDNEY RAFFEL, HERBERT ROBBINS, SAMUEL COHEN, d/b/a PRESIDENT MADISON HOTEL,

Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants.

TEMPORARY RESTRAINING ORDER

THIS CAUSE has been heard after due notice on plaintiffs' application for interlocutory injunctive relief, and the Court has heard and considered the proofs submitted in support of and in opposition to such application.

The Court is guided and governed by the opinion of the Supreme Court of Florida filed May 27, 1955, in SAX ENTERPRISES, INC. versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., as the same was applied in my opinion and order filed June 10, 1955, in McALLISTER HOTEL INC. versus HOTEL EMPLOYEES UNION LOCAL NO. 255 (A. F. of L.), et al. (Chancery Cause Numbered 180,054), BISCAYNE TERRACE HOTEL, INC. versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al (Chancery Cause Numbered 180,055), and ABE ALLENBERG, et al., doing business as MIAMI COLONIAL HOTEL versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.) et al (Chancery Cause Numbered 180,056). Under the principles therein enunciated the picketing is unlawful.

ACCORDINGLY, IT IS ORDERED AND DECREED that the defendants, HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Offi-

cers thereof, their agents, servants, employees, and all persons acting in concert or participation with them, be and they are, and each of them is, restrained and enjoined until the further order of this Court from picketing the plaintiffs' place of business located at 3801 Collins Avenue, Miami Beach, Florida.

The plaintiff shall, within four days from this date, furnish and file a good and sufficient bond in the penal sum of $2,500.00, payable to the defendants, with surety or sureties to be approved by the Clerk, conditioned to pay all damages and costs which the defendants shall suffer or incur as a result of the wrongful application for this order should it be determined that such application was wrongful.

DONE AND ORDERED in the Courthouse, Dade County, Florida, at Miami, June 16, 1955.

VINCENT C. GIBLIN
Circuit Judge

Robert Richter

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-C

MORRIS LANSBURGH AND DANIEL LIFTER,
Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, OF THE AMERICAN FEDERATION OF LABOR, et al.,
Defendants.

PRELIMINARY INJUNCTION

Plaintiffs' application for preliminary injunction came on for hearing before the Court, after notice, on the sworn bill of complaint and affidavits filed by the Plaintiffs in support of the application, and the sworn answer of the Defendants and counter-affidavits filed by the Defendants in opposition to the application. Arguments of counsel for the respective parties were heard.

WHEREUPON, IT IS ORDERED that the applications and prayer for a preliminary injunction is granted for the reason that it affirmatively appears from the pleadings filed in this Court and the affidavits and counter-affidavits filed that the Plaintiffs did not refuse to negotiate with the Defendants, but that the Defendants failed to provide the Plaintiffs with substantial or satisfactory proof or evidence that would establish to the Plaintiffs that the Defendants had been designated as the collective bargaining agent for the Plaintiffs' employees. It further appears from the record in this cause that the Defendants engaged in picketing for an illegal purpose, that of forcing the employees of the Robert Richter Hotel to designate the union or the individual defendants as their bargaining agent and to coerce the owners of the hotel, through economic sanction, to sign a contract with the union and to use said contract as a basis to compel the employees of the Plaintiffs to become members of the defendant union.

ACCORDINGLY, IT IS ORDERED as follows:

1. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined

and restrained from picketing or causing to be picketed the Robert Richter Hotel and Cabana Club, its environs or approaches.

2. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from carrying or causing to be carried any signs, placards or propaganda of any nature, kind or description in front of the Robert Richter Hotel and Cabana Club, its environs or approaches.

3. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from publishing or causing to be published any statements to the effect that a strike or lockout is in effect at the Robert Richter Hotel or Cabana Club, or that the plaintiffs, Morris Lansburgh and Daniel Lifter, refuse to negotiate or recognize the defendants as a collective bargaining agent of the employees of the Robert Richter Hotel.

4. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants be and they are hereby enjoined and restrained from molesting, interfering with, intimidating, coercing or directing any violence toward the Plaintiffs, Morris Lansburgh and Daniel Lifter, their property, their employees or servants.

5. The Plaintiffs, or one of them, shall file herein an injunction bond, payable to the defendants in the principal amount of $2,000.00, with good and sufficient surety to be approved by the Clerk of this Court, and conditioned as required by law, to pay all costs, damages and expenses which may be suffered by defendants by reason of the issuing of said injunction, if the injunction shall be dissolved or if the bill upon which it was granted be dismissed.

6. This order shall remain in force and effect pending this cause and until further order of this Court.

DONE AND ORDERED, in Chambers, at Miami, Florida, this 17th day of June, A. D. 1955.

CHARLES A. CARROLL
Circuit Judge

Martinique

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,445

MARTINIQUE HOTEL, INC., A FLORIDA CORPORATION

Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFofL), et al.,

Defendants.

PRELIMINARY INJUNCTION

Plaintiff's application for preliminary injunction came on for hearing before the court, after notice, on the sworn bill of complaint and affidavits filed by the plaintiff in support of the application, and the sworn answer of the defendants and counter affidavits filed by the defendants in opposition to the application. Arguments of counsel for the respective parties were heard.

WHEREUPON, IT IS ORDERED that the application and prayer for a preliminary injunction is granted for the reason that it affirmatively appears from the pleadings filed in this court and the affidavits and counter-affidavits filed that the plaintiff did not refuse to negotiate with the defendants, but that the defendants failed to provide the plaintiff with substantial or satisfactory proof or evidence that would establish to the plaintiff that the defendants had been designated as the collective bargaining agent for the plaintiff's employees. It further appears from the record in this cause that the defendants engaged in picketing for an illegal purpose, that of forcing the employees of the Martinique Hotel to designate the union or the individual defendants as their bargaining agent and to coerce the owners of the hotel, through economic sanction, to sign a contract with the union and to use said contract as a basis to compel the employees of the plaintiff hotel to become members of the defendant union.

ACCORDINGLY, IT IS ORDERED as follows:

1. That the defendants, and each of them, and their servants,

agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from picketing or causing to be picketed the Martinique Hotel, its environs or approaches.

2. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from carrying or causing to be carried any signs, placards or propaganda of any nature, kind or description in front of the Martinique Hotel, its environs or approaches.

3. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from publishing or causing to be published any statements to the effect that a strike or lockout is in effect at the Martinique Hotel, or that the plaintiff refuses to negotiate or recognize the defendants as a collective bargaining agent of the employees of the Martinique Hotel.

4. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants be and they are hereby enjoined and restrained from molesting, interfering with, intimidating, coercing or directing any violence toward the plaintiff hotel, its property, its employees or servants.

5. The plaintiff shall file herein an injunction bond, payable to the defendants in the principal amount of $2,000.00 with good and sufficient surety to be approved by the Clerk of this Court, and conditioned as required by law, to pay all costs, damages and expenses which may be suffered by defendants by reason of the issuing of said injunction, if the injunction shall be dissolved or if the bill upon which it was granted be dismissed.

6. This order shall remain in force and effect pending this cause and until further order of this court.

DONE AND ORDERED in chambers at Miami, Dade County, Florida, this 17 day of June, 1955.

CHARLES A. CARROLL
Circuit Judge

APPENDIX B

ASSIGNMENTS OF ERROR

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

IN CHANCERY No. 178,668-J

HARRY LEVY, MARK ALLEN, LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., et al., d/b/a THE SHERRY FRONTENAC HOTEL,

Plaintiffs

- versus -

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.) et al.,

Defendants

ASSIGNMENTS OF ERROR

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to reply upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 30th day of November, 1955, and recorded in Chancery Order Book 1214, page 240 of the records of this Court, from they have appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that

the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV, of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial or otherwise, thereby depriving the

members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. BROWN
GRAMLING & GRAMLING
Solicitors for Defendants
By *Carrington Gramling*

(Substantially identical assignments of error were filed in each of the other cases here sought to be reviewed.)